

AUG 24 2006

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Fax No. 513-634-6108

Phone No. 513-634-2477

Application No.: 09/996,663

Inventor(s): Daniel Raymond Cerone, et al.

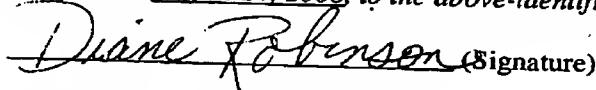
Filed: November 29, 2001

Docket No.: 8794

Confirmation No.: 4856

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- 1) Appeal Brief (10 pages)
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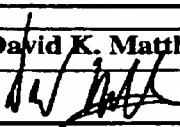
AUG 24 2006

PTO/SB/17 (1-06)
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL for FY 2006 Patent fees are subject to annual revision. Effective December 8, 2004		Complete If Known	
		Application Number	09/996,663
		Confirmation Number	4856
		Filing Date	November 29, 2001
		First Named Inventor	Daniel Raymond Cerone, et al.
		Examiner Name	Robin Annette Hylton
		Art Unit	3727
TOTAL AMOUNT OF PAYMENT (\$) 500.00		Docket No.	8794

METHOD OF PAYMENT			FEES CALCULATION (continued)	
1. [X] The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to: Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company			5. ADDITIONAL FEES	
			Fee Description	Fee Paid
			Extension for reply within 1 st month	(\$120) <input type="checkbox"/>
			Extension for reply within 2 nd month	(\$450) <input type="checkbox"/>
			Extension for reply within 3 rd month	(\$1,020) <input type="checkbox"/>
			Extension for reply within 4 th month	(\$1,590) <input type="checkbox"/>
			Extension for reply within 5 th month	(\$2,160) <input type="checkbox"/>
			Information Disclosure Statement fee	(\$180) <input type="checkbox"/>
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			Non-English specification	(\$130) <input type="checkbox"/>
			Notice of Appeal	(\$500) <input type="checkbox"/>
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			Request for oral hearing	(\$1,000) <input type="checkbox"/>
			Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370) <input type="checkbox"/>
			Other: _____	<input type="checkbox"/>
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<u>Fee</u> <u>Fee</u> <u>Fee</u>				
Application			Fee Paid	
Type				
Nonprovisional (\$300)	(\$500)	(\$200)		
Utility		(Total = \$1000)	<input type="checkbox"/>	
Design	(\$200)	(\$100)	(\$130)	
			(Total = \$430)	<input type="checkbox"/>
Reissue	(\$300)	(\$500)	(\$600)	
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Provisional Utility filing fee			(Total = \$200)	<input type="checkbox"/>
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Sheets of Spec and Drawings			<input type="checkbox"/>	
(\$250 for each 50 sheets in excess of 100, except for sequence and program listings)				
SUBTOTAL (2)+(3)			(\$)[0]	
4. EXTRA CLAIM FEES FOR UTILITY AND REISSUE:				
Extra Fee from Fee				
<u>Claims</u> <u>Below</u> <u>Paid</u>				
Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x <input type="checkbox"/> = <input type="checkbox"/>				
Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x <input type="checkbox"/> = <input type="checkbox"/>				
Multiple Dependent claims: <input type="checkbox"/> = <input type="checkbox"/>				
** or number previously paid, if greater; For Reissues, see below				
Fee Description				
Claims in excess of 20 (\$50 per claim)				
Independent claims in excess of 3 (\$200 per claim)				
Multiple dependent claim, if not paid (\$360)				
**Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim)				
**Reissue claims: each claim over 20 and more than original patent (\$50 per claim)				
SUBTOTAL (4)			(\$)[0]	
			SUBTOTAL(5) (\$)[500]	

SUBMITTED BY		Complete (if applicable)		
Name (Print/Type)	David K. Mattheis	Registration No. (Attorney/Agent)	48,683	Telephone (513) 634-9359
Signature			Date	August 24, 2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/996,663
Inventor(s) : Daniel Raymond Cerone
Filed : November 29, 2001
Art Unit : 3727
Examiner : Robin Annette Hylton
Docket No. : 8794
Confirmation No. : 4856
Customer No. : 27752
Title : Container Including a Slider, a Reclosable Fastener and a Track Including a Ramp

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on April 6, 2006.

A timely Notice of Appeal was filed on June 28, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1 to 20 are rejected.

Claims 1 to 20 are appealed.

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A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

As provided in Claim 1, and using the reference numbers illustrated in Fig. 1, in one aspect the invention consists of a container 10 comprising a container body 12 comprising a first fastener portion 42; a cover 30 comprising a second fastener portion 44 adapted to engage the first fastener portion 42 to form a reclosable fastener 40 having a first end 53 and a second end 55, wherein the cover 30 defines an X-Y plane when the first fastener portion 42 and second fastener portion 44 are engaged; a track 46 comprising a track fastener portion 58 formed on the reclosable fastener 40 and a ramp 65 extending from the X-Y plane; and a slider 100 movable along the track 46 to open or close the reclosable fastener 40. See specification page 7, line 22 – page 10 line 18.

As provided in Claim 18, and using the reference numbers illustrated in Fig. 1, in one aspect the invention consists of a container 10 comprising a container body 12 comprising a first fastener portion 42; a cover 30 comprising a second fastener portion 44 adapted to engage the first fastener portion 42 to form a reclosable fastener 40 having a first end 53 and a second end 55, wherein the cover 30 defines an X-Y plane when the first fastener portion 42 and second fastener portion 44 are engaged; a track 46 comprising a track fastener portion 58 formed on the reclosable fastener 40 and a ramp 65 extending from the X-Y plane; and a slider 100 movable along the track 46 to open or close the reclosable fastener 40, and a location for parking the slider 100. See specification page 7, line 22 – page 10 line 18.

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As provided in Claim 19, and using the reference numbers illustrated in Fig. 1, in one aspect the invention consists of a rigid elongate reclosable fastener 40 comprising interlocking protruded and recessed portions 42, 44, the fastener 40 defining a plane comprising orthogonal X and Y dimensions when the portions are interlocked, a slider 100, and a track 46 for the slider 100, the track 46 including a fastener portion 58 formed on at least one of the interlocking portions and a ramp 65 extending from a first end 53 of the interlocking portions at an angle to the X-Y plane, wherein the slider is moved along the track to open or close the interlocking portions. See specification page 7, line 22 – page 10 line 18.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Rejection under 35 USC §102(b) as being anticipated by Hupp (WO 01/51378)
Claims 1-20

ARGUMENTS

1. Rejection of claims 1-20 under 35 USC §102(b) as being anticipated by Hupp (WO 01/51378).

The Examiner rejects claims 1-20 as anticipated by Hupp (WO 01/51378). The Examiner acknowledges that the cited reference does not describe a ramp extending out of the plane formed by the engaged fastener and relies for the anticipatory teaching on a plan view of a container provided in the reference. Appellant is at a loss as to how a single plan view of an object can illustrate a feature said to extend from the plane illustrated in the view.

The Examiner provides that item 64 as shown in Fig. 2 of the reference extends from the plane formed by the engagement of the cover with the body of the container. Fig. 2 is a single planar view of an object. All the information communicated by Fig.2 is

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provided in a single plane. The plane illustrated is that X-Y plane formed by the closed fastener of the illustrated container. The plane of the fastener and the plane of the figure are the same. The relationship of the elements within the illustrated plane is discernable. The relationship of the illustrated elements to the illustrated plane is not discernable from this single plane view. It is not possible to say from this single view that a particular element of the figure lies in the plane, out of the plane or extends from the plane. Similarly, it is not possible to discern from Appellant's Fig. 4 or Fig. 5, the relationship of elements 60 or 65 to the plane of the engaged fastener 40. However, Appellant's Fig. 5a and 5b clearly illustrate that element 65 extends from the plane of element 40. Fig. 1a shows that element 60 lies in the plane of element 40 rather than extending from it.

To anticipate a claimed invention, a cited reference must teach each of the limitations of the invention as claimed. The Examiner offers Fig. 2 as the only portion of the reference teaching a ramp extending from the X-Y plane defined by the engaged fastener of the invention. The cited figure lacks sufficient information to teach the relationship posited by the Examiner.

The Examiner admits that the written specification does not teach the invention as claimed and instead relies entirely upon the Figures for the anticipatory teaching regarding the ramp. The figures of the reference cannot be used to provide the requisite information lacking. The relationship of element 64, set forth by the Examiner as teaching a ramp extending from the plane of the engaged fastener, to the plane of the fastener is not illustrated. Appellant submits that as Fig. 1 does not illustrate an engaged fastener or the X-Y plane defined thereby. The relationship of the element 64 to an un-illustrated plane is not discernable. Fig. 2, as has been noted cannot provide the information suggested by the Examiner regarding the relationship. Fig. 3 does not illustrate element 64. Appellant submits that the rejection is not supported as the figures do not teach all of the elements of the invention as claimed. Element 64 is not illustrated as necessarily extending from the plane of the engaged fastener as claimed.

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SUMMARY

The cited reference fails to teach or suggest each of the elements of the invention as claimed. Specifically, the illustrations of the reference cannot be said to teach a ramp necessarily extending from the plane defined by the engaged fastener of the container. In view of all of the above, it is respectfully requested that the rejection under 35 USC §102(b) be overturned.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

David K. Mattheis

Typed or printed name

Registration No. 48,683

(513) 634-9359

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CLAIMS APPENDIX

1. (Rejected) A container comprising
 - (a) a container body comprising a first fastener portion;
 - (b) a cover comprising a second fastener portion adapted to engage the first fastener portion to form a reclosable fastener having a first end and a second end, wherein the cover defines an X-Y plane when the first fastener portion and second fastener portion are engaged;
 - (c) a track comprising a track fastener portion formed on the reclosable fastener and a ramp extending from the X-Y plane; and
 - (d) a slider movable along the track to open or close the reclosable fastener.
2. (Rejected) The container according to claim 1, wherein the slider is movable in the track in a closing direction from the second end of the reclosable fastener to the first end of the reclosable fastener and is movable in the track in an opening direction from the first end of the reclosable fastener to the second end of the reclosable fastener.
3. (Rejected) The container according to claim 2, wherein the ramp is adapted for parking the slider after closing the reclosable fastener.
4. (Rejected) The container according to claim 2, wherein the track further comprises an auxiliary track extending from the second end of the reclosable fastener and adapted for parking the slider after opening the reclosable fastener.
5. (Rejected) The container according to claim 1, wherein the slider has a leading edge in the opening direction, the leading edge adapted to engage the cover at about the first end of the reclosable fastener to open the container.
6. (Rejected) The container according to claim 1, wherein the cover comprises a flexible lip extending from the reclosable fastener.
7. (Rejected) The container according to claim 6, wherein the slider is adapted to engage the flexible lip at about the first end of the fastener to initiate opening of the reclosable fastener.

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8. (Rejected) The container according to claim 7, wherein the slider engages an underneath side of the flexible lip forcing the cover to separate from the container body.
9. (Rejected) The container according to claim 6, wherein the ramp and the first end of the reclosable fastener define an angle therebetween, the angle sufficiently steep to allow the slider to engage the flexible lip at about the first end of the fastener to initiate opening of the reclosable fastener.
10. (Rejected) The container according to claim 9, wherein the angle is an acute angle.
11. (Rejected) The container according to claim 1, wherein the reclosable fastener comprises interlocking protruded and recessed elements, the protruded element is provided on the container body and the recessed element is provided on the cover.
12. (Rejected) The container according to claim 1, wherein the ramp has a radius of curvation at about the first end of the fastener.
13. (Rejected) The container according to claim 1, wherein the ramp extends linearly for a distance to allow the slider to be parked without interfering with the cover.
14. (Rejected) The container according to claim 1, wherein the reclosable fastener is sealable.
15. (Rejected) The container according to claim 1, wherein the reclosable fastener is adapted to fasten the cover around at least a portion of a perimeter of the container.
16. (Rejected) The container according to claim 15, wherein the portion of the perimeter defines a single plane.
17. (Rejected) The container according to claim 15, wherein the portion of the perimeter defines more than one plane.

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18. (Rejected) A container comprising:
 - a cover comprising a first fastener portion,
 - a container body comprising a second fastener portion adapted to engage the first fastener portion to form a reclosable fastener having a first end and a second end, wherein the cover defines an X-Y plane when the first fastener portion and second fastener portion are engaged;
 - a slider slidably attached to the reclosable fastener and movable along the reclosable fastener to open or close the reclosable fastener; and
 - a ramp extending from the reclosable fastener at an angle to the XY plane and providing a parking location for the slider.
19. (Rejected) A rigid elongate reclosable fastener comprising interlocking protruded and recessed portions, the fastener defining a plane comprising orthogonal X and Y dimensions when the portions are interlocked, a slider, and a track for the slider, the track including a fastener portion formed on at least one of the interlocking portions and a ramp extending from a first end of the interlocking portions at an angle to the X-Y plane, wherein the slider is moved along the track to open or close the interlocking portions.
20. (Rejected) The container according to claim 6, wherein the ramp and the first end of the reclosable fastener define an angle therebetween, the angle sufficiently steep to allow the slider to initiate opening of the reclosable fastener.

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EVIDENCE APPENDIX

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RELATED PROCEEDINGS APPENDIX

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